NUTRITION SERVICES DIVISION MANAGEMENT BULLETIN

No. 02-211

TO:	Child and Adult Care Food Program Sponsors	**ISSUE DATE:** May 2002
ATTENTION:	Food Program Directors	
SUBJECT:	Use of "Stop Payments"	
REFERENCE:	United States Department of Agriculture CACFP Policy Memo 02-11	

The United States Department of Agriculture, Western Region Office has provided the following answers to questions regarding the ability of state agencies and sponsoring organizations to use "stop payments" (suspension of all program reimbursement to institutions or providers) as a tool to enforce an institution's or a provider's compliance with program requirements for the Child and Adult Care Food Program.

Consistent with the NSLA, may a state agency or sponsoring organization use stop payments to enforce regulatory compliance?

No. The National School Lunch Act (NSLA), as amended by the Agricultural Risk Protection Act of 2000 (ARPA), requires that an institution or a provider have an opportunity for an administrative review prior to termination and that, except when the law authorizes "suspension" of payments, the institution or provider continue to receive program reimbursement for all valid claims filed during the period of appeal.

What is "suspension"?

Suspension refers to a period of time (**prior to** the formal termination of an institution or day care home's program agreement) when the institution's or home's program participation, including program payments, is suspended. The law, as amended by ARPA and the Grain Standards and Warehouse Improvement Act of 2000 (Public Law 106-472), specifies only two circumstances warranting suspension. Suspension, in effect, results in the same action as a "stop payment," the discontinuation of program payments prior to any formal termination of the entity's program agreement. In all other cases, an entity would continue to participate and receive program reimbursement until its program agreement is terminated.

What are the two circumstances warranting suspension under the NSLA?

When an institution or family day care home engages in conduct that poses an imminent threat to the health or safety of participants or the public, the program participation must be suspended, including program reimbursement. This is the only circumstance under which the law permits a "stop payment" procedure without first offering the institution or home an opportunity for corrective action and appeal.

Public Law 106-472 amended the NSLA to authorize suspension of payments to an **institution** under one other circumstance: the institution knowingly submits a false or fraudulent claim. However, in this instance, suspension can only occur after the institution has been declared seriously deficient and provided an opportunity to take corrective action, and after a suspension review official has found that the preponderance of the evidence suggests that the institution knowingly submitted a false or fraudulent claim.

May sponsors suspend payments to a provider that submits false or fraudulent claims?

The law only provides for the suspension of payments to **providers** when a provider has engaged in conduct that poses an imminent threat to the health or safety of participants or the public. However, **neither a state agency nor a sponsoring organization may pay an invalid claim**.

Doesn't the prohibition on paying "invalid claims" to an institution or provider amount to a de facto suspension of payments?

No. Suspension involves a total cessation of program payments until an administrative review officer has ruled on a home or institution's appeal or until a home or institution fails to request an appeal prior to the regulatory deadline. The prohibition on paying invalid claims means that an institution or home must not be reimbursed for **that portion of a claim** knows to be invalid.

Are there any circumstances under which an entire claim could be deemed "invalid"?

Yes, under certain circumstances.

For example, if it is determined that an independent center had improperly claimed meals for an extended period of time by failing to take meal counts, the center would be declared seriously deficient and allowed an appropriate period of time for the completion of corrective action. If a follow-up review resulted in a determination that the center had failed to institute meal counting as required in the corrective action plan, no part of the claim for that period (the period of corrective action) would be considered valid and, therefore, no portion of the claim would be reimbursed.

Doesn't the prohibition on "stop payments" limit our ability to employ a graduated series of sanctions in situations where regulatory non-compliance is minor?

We agree that a single instance of non-compliance with minor program requirements should not lead to a declaration of serious deficiency, and we encourage state agencies and sponsoring organizations to develop and disseminate policies that clearly define escalating consequences in these situations. For example, a provider whose menus contain a minor error should receive additional training or technical assistance and not be declared seriously deficient. In these situations, it would be appropriate for sponsoring organizations to develop a clear policy with regard to corrective actions before a declaration.

How do we determine that regulatory non-compliance is at the level of a "serious deficiency"?

The program regulations in Title 7, Code of Federal Regulations Section 226.6(c) define "serious deficiencies" for institutions. If not corrected, serious deficiencies result in a provider's termination for cause. Serious deficiencies for family day care homes include:

- Misrepresentation of information submitted on the application;
- Submission of false claims for reimbursement;
- Simultaneous participation under more than one sponsor;
- Non-compliance with the program meal pattern;
- Failure to keep required records; or
- Any other circumstance related to non-performance under the sponsor-provider agreement, as specified by the state agencies or sponsoring organizations.

If you have any questions, please contact your Nutrition Services Division Representative, the Field Services Unit at (916) 445-0850 or (800) 952-5609, or John Copley, Program Analyst, at (916) 323-6631 or jcopley@cde.ca.gov.

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